

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,) No. 3:15-CR-125
)
V.)
)
) (VARLAN / SHIRLEY)
FRANK BLAIR TOMB,)
)
)
Defendant.)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case is before the Court on the Defendant's Motion to Continue Trial Setting and Modify Corresponding Deadlines [Doc. 10], filed on December 7, 2015. In this motion, the Defendant asks the Court to continue the January 12, 2016 trial date sixty days to permit more time for counsel to complete his review of discovery, investigate the case, and prepare and litigate necessary pretrial motions. The motion states that the Government is not opposed to the requested continuance.

On December 14, 2015, the Court conducted a telephone conference with counsel. Assistant United States Attorney Cynthia Davidson appeared on behalf of the Government. Attorney Stephen Ross Johnson represented the Defendant. Mr. Ross stated that despite the diligent work of counsel, additional time was needed to prepare this case for trial. He stated that he had recently requested additional discovery from the Government regarding employee training records. He said that he had reviewed the instant motion with the Defendant, who agrees with the need for a continuance. AUSA Davidson agreed that the discovery in this case is

voluminous. She stated that she had received Mr. Ross's most recent discovery request, and she agreed to provide it but had not started compiling this additional discovery yet. Although Mr. Ross initially requested a sixty-day continuance, upon review of the entire schedule, including a late-January motion deadline, he agreed that additional time was necessary. The parties agreed on a new trial date of April 12, 2016.

The Court finds the Defendant's motion [Doc. 10] for a trial continuance to be well taken. It finds that the ends of justice served by granting a continuance outweigh the interest of the Defendant and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Defense counsel seeks additional time to investigate the case, to conduct legal research, to litigate any necessary pretrial motions, and to prepare for trial. Based upon the representations of the parties, the Court finds that the failure to grant a continuance would deprive defense counsel of the reasonable time necessary to prepare effectively for a trial, despite his use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv). The Court finds that such preparation cannot be accomplished before the January 12 date or in less than four months.

The Defendant's motion [Doc. 10] to continue the trial is **GRANTED**, and the trial is reset to **April 12, 2016**. The Court finds that all the time between the filing of the motion to continue on **December 7, 2015**, and the new trial date of **April 12, 2016**, is fully excludable time under 18 U.S.C. § 3161(h)(1)(D) & -(7)(A)-(B). With regard to further scheduling, the Court set a new motion deadline for **January 26, 2016**. Responses to motions are due on or before **February 9, 2016**. The parties are to appear before the undersigned for a pretrial conference and motion hearing on **February 17, 2016, at 10:00 a.m.** The deadline for concluding plea negotiations is extended to **March 14, 2016**. This date is also the deadline for providing reciprocal discovery. The Court further instructs the parties that all motions *in limine* must be

filed no later than **March 28, 2016**. Special requests for jury instructions shall be submitted to the District Judge no later than **April 1, 2016**, and shall be supported by citations to authority pursuant to Local Rule 7.4.

Accordingly, it is **ORDERED**:

- (1) The Defendant's Motion to Continue Trial Setting and Modify Corresponding Deadlines [**Doc. 10**] is **GRANTED**;
- (2) The trial of this matter is reset to commence on **April 12, 2016**, at 9:00 a.m., before the Honorable Thomas A. Varlan, Chief United States District Court Judge;
- (3) All time between the filing of the Defendant's motion on **December 7, 2015**, and the new trial date of **April 12, 2016**, is fully excludable time for speedy trial purposes as set forth above;
- (4) The deadline for filing pretrial motions is extended to **January 26, 2016**;
- (5) Responses to motions are due on or before **February 9, 2016**;
- (6) The deadline for concluding plea negotiations is extended to **March 14, 2016**. This date is also the deadline for providing reciprocal discovery;
- (7) Motions *in limine* must be filed no later than **March 28, 2016**; and
- (8) Special requests for jury instructions with appropriate citations shall be submitted to the District Court by **April 1, 2016**.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge